

Dave and RC,

I appreciate your leadership in establishing the advisory committee process for addressing the issues and needs for clarification in the electronic on-board recorder (EOBR) technical requirements. I think we have accomplished much already, and I am confident that this MCSAC EOBR subcommittee process will be successful in defining effective EOBR technical guidelines for the 395.16 rule and future EOBR requirements.

There is an area of potential concern that has been brought to my attention where some additional process guidelines may be in order, specifically relating to patent policy. The EOBR subcommittee is acting very much like a standards setting organization as it defines and clarifies specific technical requirements for EOBRs. I think we should consider applying a patent policy much like the guideline offered by the American National Standards Institute (ANSI) – see attachment. Such a policy requires the early disclosure of and an agreement, to licensing on fair, reasonable, and non-discriminatory (FRAND) terms, for any patent or patent application considered essential to the standard. For EOBR subcommittee purposes, it would be relative proposed EOBR technical requirements in the rule.

By taking such an approach, I think we will enhance the efficiency and integrity of our EOBR subcommittee process. The risk of not imposing a patent policy is that there is potential for non-material issues and non-safety related concerns to adversely affect committee discussions and create negative perceptions about the process. I am not suggesting that there has been any wrong doing or that patent rights should be limited, but disclosure of Intellectual Property interests and agreement to offer licenses under FRAND terms by EOBR provider members of the EOBR subcommittee could prevent uncertainties related to patent considerations. The use of a patent policy is an effective tool that is widely applied by standards development organizations.

Considering that we may have future discussions on complex technical issues for EOBR requirements related to data security, data transfer protocols, tamper prevention and detection, driver identity controls, management system controls, etc. , I expect that there may be several patents or pending applications that should be disclosed to all members of the EOBR subcommittee. I think we will be well served by implementing a patent policy with early disclosures, and I recommend that you take action on this as soon as possible. Please let me know if I can be of assistance.

Dave
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